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IN THE  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

THE STATE OF ARIZONA, ET AL.,  
PETITIONERS,

VS.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY  
COMPANY AND THE SOUTHERN PACIFIC  
TRANSPORTATION COMPANY,  
RESPONDENTS.

ON PETITION FOR A WRIT  
OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

BRIEF OF RESPONDENT SOUTHERN PACIFIC  
TRANSPORTATION COMPANY IN OPPOSITION

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SOUTHERN PACIFIC TRANSPORTATION  
COMPANY

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## QUESTION PRESENTED

Does 49 U.S.C. § 11503(c), which authorizes the federal courts to enjoin discriminatory taxation of railroads, require a balancing of traditional equitable considerations in addition to a finding of discrimination?

## PARTIES

The parties to this action are accurately listed in the Petition.

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## OPINIONS BELOW

The memorandum decision of the United States Court of Appeals for the Ninth Circuit was filed December 23, 1983. The opinion of the United States District Court for the District of Arizona was filed May 2, 1983 and is unreported. Copies of both decisions are contained in the Appendix of the Petition.

## JURISDICTION

The jurisdictional statement contained in the Petition is adequate.

## STATUTORY PROVISIONS INVOLVED

Public Law 94-210 of the 94th Congress, 90- Stat. 54 (1976), commonly called the Railroad Revitalization and Regulatory Reform Act of 1976 ("4-R Act"), was enacted on February 5, 1976. Section 306 of that Act prohibits the assessment

by a state for ad valorem tax purposes of rail transportation property at a higher ratio of the assessed value to the true market value of such rail transportation property than the ratio which the assessed value of all other commercial and industrial property in the same assessment jurisdiction bears to the true market value of all such other commercial and industrial property. Section 306 was originally codified at 49 U.S.C. § 26c. In October, 1978, § 26c was repealed and recodified at 49 U.S.C. § 11503. This recodification was intended to make no substantive change in the statute, as originally enacted by Congress.

#### STATEMENT OF THE CASE

On April 29, 1983 the United States District Court for the District of Arizona granted respondent railroads, the Atchison, Topeka & Santa Fe Railway

Company and the Southern Pacific Transportation Company, a preliminary injunction restraining the State of Arizona and its counties from collecting from respondents the second installment of the 1983 property tax on the grounds that the evidence demonstrated that it was probable that the tax was discriminatory and thus prohibited by the Railroad Revitalization and Regulatory Reform Act of 1976 (the "4-R Act"), 49 U.S.C. § 11503 et seq. The district court found that the railroad properties had been assessed for tax purposes at a rate equal to 33% of value while other commercial and industrial properties within the same jurisdiction were assessed at only 15% of value.

The district court concluded that it was unnecessary to consider traditional equitable factors in issuing the preliminary injunction. The court held

that once a probable violation of the 4-R Act was demonstrated, injunctive relief should be granted, based upon the decisions in Trailer Train Co. v. State Board of Equalization, 697 F.2d 860 (9th Cir. 1983) cert. denied, 104 S.Ct. 149 (1983) and Atchison, Topeka and Santa Fe Railway Co. v. Lennen, 640 F.2d 255 (10th Cir. 1981). As an alternative and independent basis for its decision, the district court found that, even if traditional equitable factors were considered, the equities favored the railroads and supported issuance of the preliminary injunction. The court observed that the discriminatory practices of the State and counties were contrary to Arizona statutes which require all properties to be valued at fair market value for tax purposes, Arizona Revised Statutes, § 42-201(4). Further, the State and counties had been given three years' advance notice

of the effective date of the 4-R Act by Congress and still had failed to take advantage of this lead time to correct their discriminatory tax practices. Thus upon consideration of the equities, the court concluded that the preliminary injunction sought by the railroads should issue.

The district court's decision was appealed to the Court of Appeals for the Ninth Circuit on the grounds that the district court had erred by failing to take into account traditional equitable considerations. The State and counties argued that any reading of the 4-R Act which would dispense with the necessity of traditional equitable considerations is erroneous as a matter of law in view of this Court's decision in Weinberger v. Romero-Barcelo, 456 U.S. 305 (1982), where the availability of injunctive relief under the Federal Water Pollution Control

Act, 53 U.S.C. § 1251, was held not to preclude the courts from taking into account traditional equitable considerations in deciding whether to issue an injunction.

The Court of Appeals disagreed with the contentions of the State and counties in a memorandum decision filed December 23, 1983, in which the court held that it was bound by its prior decision in Trailer Train. The State and counties have petitioned for writ of certiorari from that decision.

#### SUMMARY OF ARGUMENT

The decisions of the district court and court of appeals in this case are consistent with district court and appellate decisions in other jurisdictions, which other decisions this court has declined to review. This Court's decision in Weinberger does not affect the standards

to be applied under the 4-R Act in issuing an injunction to prevent discriminatory taxation of railroads. Further, even if traditional equitable standards were to be applied in this case, the district court found that the balance of equities is on the side of the railroads.

#### ARGUMENT

Certiorari should be denied in this case for the same reason that this Court denied certiorari in Trailer Train and in Tennessee v. Louisville & Nashville Railroad Co., 478 F.Supp. 199 (M.D. Tenn. 1979), aff'd mem., 652 F.2d 59 (6th Cir. 1981), cert. denied, 454 U.S. 834 (1981). Those decisions, and the decision in Lennen, hold that the 4-R Act does not require an evaluation of traditional equitable considerations once a showing of a probable violation of the Act has been made.

Petitioners contend that this Court's decision in Weinberger effectively overrules those decisions.

Weinberger, however, dealt with the Federal Board of Pollution Control Act, 33 U.S.C. § 1251, and had nothing whatsoever to do with the 4-R Act. In Weinberger, this Court concluded that under the Federal Water Pollution Control Act the issuance of an injunction was not necessary to attain the objectives of the statute because the statute provided various methods by which compliance could be accomplished. Injunctive relief was simply one of many methods of effecting the statutory objective.

In deciding Weinberger this Court distinguished Tennessee Valley Authority v. Hill, 437 U.S. 153 (1978), pointing out that the statute under consideration in Hill, the Endangered Species Act

of 1973, 16 U.S.C. § 1531, provided only one remedy to avoid extinction of the snail darter and to give effect to the statute. That remedy was the issuance of an injunction. Thus, Weinberger and Hill stand for the proposition that under some statutory schemes an injunction is to be issued upon a showing of probable violation of the statute while under other statutes the federal courts may take into account traditional equitable considerations in deciding whether to issue an injunction. The question here is whether the 4-R Act contemplates the issuance of an injunction to accomplish its objective of preventing discriminatory taxation of railroads, without the necessity of evaluating traditional equitable considerations. Courts which have considered the question have consistently held that the equities need not

be weighed. Trailer Train, Lennen, and Louisville & Nashville Railroad Co.

The 4-R Act was designed to eliminate the longstanding practice of many states and local governments of discriminating against railroad properties in the imposition of property taxes. Congress studied the area for approximately fifteen years and generated numerous Congressional reports dealing with the topic. 49 U.S.C. § 11503(b) flatly prohibits the following discriminatory acts:

(b) The following acts unreasonably burden and discriminate against interstate commerce, and a State, subdivision of a State, or authority acting for a State or subdivision of a State may not do any of them.

(1) assess rail transportation property at a value that has a higher ratio to the true market value of the rail transportation property

than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.

(2) l e v y  
or collect a tax on an assessment that may not be made under clause (1) of this subsection.

(3) l e v y  
or collect an ad valorem property tax on rail transportation property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction.

(4) impose  
another tax that discriminates against a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chapter 105 of this title (emphasis added).

49 U.S.C. § 11503(c) also specifies that such discriminatory taxation is to be prevented by the federal courts:

Notwithstanding section 1341 of Title 28 and without regard to the amount in controversy or citizenship of the parties, a district court of the United States has jurisdiction, concurrent with other jurisdictions of the courts of the United States and the States, to prevent a violation of subsection (b) of this section (emphasis added).

Thus, the federal courts were specifically directed to prevent the prohibited acts from occurring, free from the restrictions of the Anti-Injunction Act. The district court found that the evidence established the probability that petitioners had discriminated against the railroads by assessing their properties for tax purposes in a manner prohibited by the statute. Thus, the preliminary injunction issued.

Petitioners contend, nevertheless, that the district court should have weighed the equities and refused the injunction. The balance of equities, according to petitioners, is that their inability to collect the taxes imposed an undue hardship in conducting their fiscal affairs. This hardship, however, is the consequence of their discriminatory tax practices and is exactly the result intended by the 4-R Act. Further, the preliminary injunction entered by the district court enjoins collection only of the discriminatory portion of the property taxes levied on the railroads. Thus, the "hardship" alleged by petitioners is simply their inability to collect an illegal tax. Rather than create a hardship, the result of the injunction was to give effect to the federal statute. Further, petitioners' argument that an injunction should not have issued for the

reason that the taxes, if finally found to be discriminatory, could be recovered by the railroads by way of a refund suit ignores the purpose of § 11503(c), which is to " . . . prevent a violation of subsection (b) of this section. . . ." Injunctive relief is the traditional method of preventing an illegal act.

Petitioners also rely upon a statement in H.R. Rep. No. 725, 94th Cong., 1st Sess. (1975), referred to on page 112 of their petition, for support of their contention that Congress intended a balancing of equities. The brief passage quoted by petitioners is taken out of context from the House Report. Read in its entirety, the Report plainly indicates that the federal courts would have broad authority to fashion injunctive relief to fit the circumstances under consideration and that only the discriminatory portion of the

tax would be enjoined. Immediately preceding the brief excerpt relied upon by petitioners, the Report states that the legislation would empower the Federal Courts to enjoin discriminatory taxes, "thus, effectively allowing the carrier to seek an injunction before paying the disputed tax." H.R. Rep. No. 94-725, 94th Cong., 1st Sess. at 77 (1975). Moreover, every other congressional report dealing with the 4-R Act omits any reference to traditional equitable considerations. See H.R. Rep. No. 585, 94th Cong., 1st Sess. 183-189 (1975); H.R. Rep. No. 764, 94th Cong., 1st Sess. 139 (1975); S. Rep. No. 595, 94th Cong., 2nd Sess. 166 (1976). Most importantly, as enacted by Congress, § 11503 reflects no intent to require a balancing of equities; the courts are authorized "to prevent" violations of the statute. The only prerequisite to injunctive relief under § 11503(c) is that there

be at least a 5% variation in the ratio of assessed value to true market value. At most, petitioners have cited an isolated ambiguity in the legislative history which, standing alone, is of little if any value in interpreting the statute. NLRB v. Plasterer's Local Union No. 79, 404 U.S. 116 (1971). Further, when a statute is unambiguous, such as § 11503, it is unnecessary to resort to legislative history. National Resources Defense Counsel, Inc. v. U.S. Environmental Protection Agency, 507 F.2d 905 (9th Cir. 1974).

Finally, it should be noted that the district court concluded that, upon considering the equities, the injunction should still issue. As the district court observed in its opinion, the State of Arizona had prepared sales ratio studies for a number of years. In the study for 1982, "data prepared by the State indicates that

the full cash value of locally-amended commercial or industrial property is only one-half its true market value," while the railroads' properties were assessed at 100% of their true market value. Petition for Writ of Certiorari at A-18. Thus, the district court pointed out that petitioners had failed to value the properties of the railroads for tax purposes in accordance with Arizona law, A.R.S. § 42-201(4), which provides that all properties are to be valued for tax purposes at full cash value. The district court further observed that Congress had given petitioners three years' advance notice of § 11503 in order to put their houses in order, and they had failed to do so. The statute became law on February 5, 1976 but its effective date was delayed until February 5, 1979. Pub.L. No. 95-473, § 2(b) (1976). The following explanation for the delay is

found at page 13 of S. Rep. No. 630,  
91st Cong., 1st Sess. (1969):

The purpose of this proviso is to provide a 3-year period of adjustment for State and local tax authorities.

The committee considers this a reasonable period for such authorities to make needed changes. Further, within the 3-year period all State legislatures will have an opportunity to meet and consider amendatory State legislation, if such is needed.

Indeed, as the district court correctly noted in its opinion, Congress had identified Arizona as one of the states which engaged in the discriminatory taxation practices that § 11503 was enacted to prevent. Petition for Writ of Certiorari at A-10. Despite the three year grace period provided by Congress and despite petitioners' own sales ratio studies

confirming their discrimination against the railroads, petitioners did nothing to remedy their illegal practices prior to the railroads' applications for injunctive relief. The district court correctly determined that these facts belie petitioners' claims of inequity and compel the finding that any balancing of equities favors the railroads. This aspect of the district court's decision is not challenged or even mentioned by petitioners. The existence of this independent factual basis for the district court's decision militates against certiorari review by this Court. United States v. Johnston, 268 U.S. 220, 227 (1925).

#### CONCLUSION

The 4-R Act was enacted to prevent what Congress had found to be the long-standing practice of many states' discriminatory taxation of railroads. When Congress

specifically provided the federal courts with authority to enjoin violations of the Act, Congress had already considered the equities and had concluded that injunctive relief was not only appropriate but necessary. Petitioners' argument that Congress intended that the courts would weigh the equities in each case is not consistent with the language of the 4-R Act or its legislative history.

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari be denied.

Respectfully Submitted,

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